

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12418-2022

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD.

Applicant

and

JANE STARK

Respondent

Before:

Ms A E Banks (in the chair)

Mr M N Millin

Mr C Childs

Date of Hearing: 21 March 2023

Appearances

There were no appearances as the matter was dealt with on the papers.

JUDGMENT ON AN AGREED OUTCOME

Allegations

- 1 The allegation against Jane Stark was that, while practising as a solicitor at North Ainley Solicitors:
 - 1.1 On or around 17 September 2020, the Respondent made false and misleading statements in an email in an attempt to obtain documents relating to a client matter, and in doing so the Respondent breached all or any of Principles 2, 4 and 5 of the SRA Principles 2019.

Documents

2. The Tribunal had before it the following documents:-
 - Rule 12 Statement and Exhibit HVL1 dated 8 December 2022
 - Answer and Exhibits dated 15 December 2022
 - Agreed Outcome dated 16 March 2023

Background

3. Ms Stark was a solicitor having been admitted to the Roll in August 2006. At the material time she was employed as a solicitor by the Firm.
4. Ms Stark admitted the allegation in full. The parties agreed that there were exceptional circumstances such that Ms Stark should not be struck off the Roll.

Application for the matter to be resolved by way of Agreed Outcome

5. The parties invited the Tribunal to deal with the Allegations against Ms Stark in accordance with the Agreed Outcome annexed to this Judgment. The parties submitted that the outcome proposed was consistent with the Tribunal's Guidance Note on Sanctions.

Findings of Fact and Law

6. The Applicant was required to prove the allegations on the balance of probabilities. The Tribunal had due regard to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with Ms Stark's rights to a fair trial and to respect for their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
7. The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that Ms Stark's admissions were properly made.
8. The Tribunal considered the Guidance Note on Sanction (10th Edition/June 2022). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed. Ms Stark had admitted that her conduct had been dishonest. The Tribunal determined that sanctions such as a Reprimand, Financial Penalty or Suspension did not adequately reflect the seriousness of the misconduct. The Tribunal then considered whether there were exceptional

circumstances such that striking Ms Stark from the Roll would be disproportionate. The Tribunal noted the medical evidence submitted as to Ms Stark's state of mind at the time of her misconduct. The Tribunal noted that the misconduct was a "moment of madness" in an otherwise unblemished career. Further, Ms Stark had made immediate admissions. The Tribunal did not accept that there had been no harm caused. Harm was caused to the reputation of the profession by virtue of the admitted misconduct.

9. The Tribunal, having carefully considered all of the material before it, found that this was a case that fell within the exceptional circumstances bracket such that striking Ms Stark from the Roll was disproportionate to her misconduct. The Tribunal determined that the proposed sanction of a suspension for 6 months with indefinite conditions adequately reflected the seriousness of the misconduct and provided protection to the public from future harm by Ms Stark. The Tribunal also found that such a sanction protected the reputation of the profession. Accordingly, the Tribunal approved the Agreed Outcome.

Costs

10. The parties agreed costs in the sum of £13,800. The Tribunal found the agreed amount to be proportionate and reasonable. Accordingly, the Tribunal ordered Ms Stark to pay costs in the agreed sum.

11. Statement of Full Order

1. The Tribunal Ordered that the Respondent, JANE STARK, solicitor, be suspended from practice as a solicitor for the period of 6 months to commence on the 21st day of March 2023 and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £13,800.00.
2. Upon the expiry of the fixed term of suspension referred to above, the Respondent shall be subject to conditions imposed indefinitely by the Tribunal as follows:
 - 2.1 The Respondent may not:
 - 2.1.1 act as a manager or owner of any authorised body, authorised non-SRA firm or legal services body;
 - 2.1.2 subject to the condition above, the Respondent may act as a solicitor, only as an employee where the role has first been approved by the Solicitors Regulation Authority;
 - 2.1.3 provide legal services as a freelance solicitor offering reserved or unreserved services on his/her own account under regulations 10.2 (a) and (b) of the SRA Authorisation of Individuals Regulations 2;
 - 2.1.4 act as a compliance officer for legal practice (COLP) or compliance officer for finance and administration (COFA) for any authorised body, or Head of Legal Practice (HOLP) or head of finance and administration (HOFA) in any authorised non-SRA firm;

- 2.2 The Respondent shall keep her professional commitments under review and limit her practice in accordance with any medical advice;
- 2.3 That, for the purposes of complying with condition 2.2 above, the Respondent shall disclose any relevant medical advice to her employer.
3. There be liberty to either party to apply to the Tribunal to vary the conditions set out at paragraph 2 above.

Dated this 4TH day of April 2023
On behalf of the Tribunal

A handwritten signature in black ink, appearing to read 'A E Banks', written in a cursive style.

A E Banks
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
04 APR 2023

BEFORE THE SOLICITORS DISCIPLINARY TRIBUNAL
IN THE MATTER OF THE SOLICITORS ACT 1974 (AS AMENDED)
BETWEEN:

SOLICITORS REGULATION AUTHORITY LIMITED

Applicant

and

JANE STARK

Respondent

AGREED OUTCOME PURSUANT TO RULE 25 OF THE SOLICITORS (DISCIPLINARY
PROCEEDINGS) RULES 2019

1. By an Application and Statement made by Hannah Lane on behalf of the Applicant pursuant to Rule 12 of the Solicitors Disciplinary Proceedings Rules 2019 dated 8 December 2022, the Applicant brought proceedings to the Tribunal making an allegation against the Respondent.
2. The allegation against the Respondent is that, on or around 17 September 2020, while practising as a solicitor at North Ainley Solicitors, the Respondent made false and misleading statements in an email in an attempt to obtain documents relating to a client matter, and in doing so the Respondent breached all or any of Principles 2, 4 and 5 of the SRA Principles 2019.
3. The Respondent admits the allegation and the facts set out in this statement and the parties have agreed a proposed outcome.

Professional Details

4. The Respondent was admitted to the Roll of Solicitors on 15 August 2006. At the relevant time, she was employed as a solicitor by North Ainley Solicitors in Oldham ("the Firm") from 8 October 2018 to 22 September 2020.

Agreed Facts

5. The following facts are agreed between the parties.
6. On 17 September 2020, while the Respondent was suspended by the Firm pending the outcome of an internal disciplinary hearing, she sent an email timed at 13:44 from her personal email account to solicitors acting for the other party in a property refinancing matter in which two of the Firm's clients were involved. In that email the Respondent falsely represented that she was having server issues and invited the solicitors to liaise with her in respect of the clients' matter via her personal email address.

7. The email sent by the Respondent on 17 September 2020 timed at 13:44 stated as follows:

"Apologies for emailing you from this email address.

I'm having server issues [at] the moment and can't log on at all, I also can't see any emails already in my work inbox. This email is attached to my work laptop and is therefore fully secure.

So, I'm conscious that the above is scheduled to complete today, but I'm still waiting for the outstanding docs that you've asked for. I've chased [the client] again today. Could you send me the financing documents for signing so I can at least get those signed by [the clients].

Thanks

Jane"

8. The statement that the Respondent was having server issues and could not log on was untrue and misleading and she knew it was untrue and misleading. In fact, she had been suspended by the Firm and her access to the Firm's email and other systems had been suspended. On 15 September 2020, the Firm had written to the Respondent informing her that she was required to attend a disciplinary hearing on 17 September 2020. The letter also stated:

"Please treat this letter as notice that you are now suspended from work on full pay pending the outcome of the Disciplinary Hearing ... Additionally, you are not to contact any clients, introducers or staff of the Firm...

Given the nature of the alleged misconduct you will not be allowed any further access to the Firm's email and other systems until such time as the disciplinary procedure has been concluded."

9. The other firm of solicitors then contacted the Firm to verify the situation. On 17 September 2020 at 15:24, the Firm wrote to the Respondent informing her that her email of 17 September had been brought to their attention and stating the following:

"...you are currently suspended. You should not be sending any emails to third parties purporting to be continuing to work on behalf of North Ainley during this period of suspension ..."

10. The Respondent replied later that day at 15:37 stating the following:

“... I had a completion today which I was not given the chance to deal with before being cut off from my work emails. I emailed ... because I didn't want the completion not to happen and the client to be in default of an existing ... loan and also because I have been prevented from contacting anyone within the firm to deal with this for me...

I will not send any further emails to clients...”

11. The Firm held a disciplinary hearing on 21 September 2020 at which the Respondent “admitted with hindsight” that she should not have sent the email to the other solicitors at a time when she was suspended from duty. Following the disciplinary hearing, the Respondent was summarily dismissed by the Firm on 22 September 2020.
12. The matter was reported to the SRA by the Firm on 30 September 2020.
13. The background to the Respondent’s suspension by the Firm was as follows:
 - 13.1. On 13 August 2020 the Firm had written to the Respondent inviting her to submit a proposal for promotion to salaried partner;
 - 13.2. The following day the Respondent submitted a resignation letter alleging a breach of the terms of mutual trust and confidence in her employment contract;
 - 13.3. On 15 September 2020 the Firm instigated disciplinary proceedings alleging that the Respondent and another solicitor at the Firm had breached two clauses in her contract of employment in setting up a limited company, and being involved in preparatory steps to commencing practice and had breached the implied duty of good faith and loyalty;
 - 13.4. The other solicitor involved had resigned from the Firm on 17 September 2020.

Medical Evidence

14. The Respondent has provided expert medical opinion on her health which is described in a confidential schedule. The opinion is relevant to the Respondent’s state of mind at the time of the misconduct.

Mitigation

15. The following mitigation is put forward by the Respondent but is not agreed by the SRA.
 - 15.1. In a letter of 12 January 2021 the Respondent provided the SRA with a detailed explanation of her conduct and the factors that led to the e-mail being sent.
[X57]
 - 15.2. In a letter of 6 June 2022, the Respondent provided the SRA with further evidence and submissions of mitigative value, which characterised the misconduct. [X12]

- 15.3. The single act of misconduct was wholly unconnected with the steps taken by the Respondent to set up in practice.
- 15.4. The misconduct concerns the false information provided in an e-mail, namely the reason why she was writing from a personal e-mail address, rather than her work e-mail address. The e-mail had been sent in circumstances in which the Respondent was concerned that clients' urgent requirements would not be addressed, as no file handover had taken place and she was concerned that remaining staff did not have the competence to 'get up to speed' on a transaction requiring urgent action that day, namely completion. The e-mail was intended simply to chase opposing solicitors for documents that were required for the purposes of the clients' completion. The Respondent had no financial interest in the completion, and acted solely to protect clients' interests.
- 15.5. The Respondent's motivation for the conduct was not personal gain but to assist a client.
- 15.6. There was no harm caused.
- 15.7. The Respondent has no regulatory history.
- 15.8. This was a single episode of misconduct in a previously unblemished career, limited to a single short email.
- 15.9. The conduct was momentary and the Respondent made immediate admissions to her Firm and to the SRA
- 15.10. The Respondent's adverse health as set out in the independent medical evidence.
- 15.11. The Respondent has reflected on the reasons for her misconduct and which are set out in the letters described above.

Penalty Proposed and Restrictions

16. Subject to the approval of the Tribunal, the Respondent agrees to be suspended from practice for a period of 6 months.
17. At the conclusion of the period of suspension, the Respondent further agrees that her Practising Certificate be subject indefinitely to the following restrictions:
 - a) That the Respondent shall not act as a manager or owner of any authorised body, authorised non-SRA firm or legal services body;
 - b) Subject to the condition above, the Respondent may act as a solicitor, only as an employee where the role has first been approved by the Solicitors Regulation Authority;
 - c) That the Respondent shall not provide legal services as a freelance solicitor offering reserved or unreserved services on his/her own account under regulations 10.2 (a) and (b) of the SRA Authorisation of Individuals Regulations;

- d) That the Respondent may not act as a compliance officer for legal practice (COLP) or compliance officer for finance and administration (COFA) for any authorised body, or Head of Legal Practice (HOLP) or head of finance and administration (HOFA) in any authorised non-SRA firm;
 - e) That the Respondent shall keep her professional commitments under review and limit her practice in accordance with any medical advice;
 - f) That, for the purposes of complying with condition e) above, the Respondent shall disclose any relevant medical advice to her employer.
18. The Respondent further agrees to pay costs in the agreed sum of £13,800 towards the SRA's costs.

Explanation as to why the proposed penalty would be in accordance with the Tribunals Sanctions Guidance

19. The Applicant has considered the relevant factors in the Tribunal's Guidance Note on Sanctions (10th edition, June 2022), including the seriousness of the misconduct, the Respondent's culpability and the harm caused, or which might reasonably have been foreseen.
20. The Respondent has admitted dishonesty. The Solicitors Disciplinary Tribunal's "Guidance Note on Sanction" (10th edition), at paragraph 51, states that: "*The most serious misconduct involves dishonesty, whether or not leading to criminal proceedings and criminal penalties. A finding that an allegation of dishonesty has been proved will almost invariably lead to striking off, save in exceptional circumstances (see Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin)).*"
21. In Sharma [2010] EWHC 2022 (Admin) at [13] Coulson J summarised the consequences of a finding of dishonesty by the Tribunal against a solicitor as follows:
- "(a) Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the Roll ... That is the normal and necessary penalty in cases of dishonesty...*
 - (b) There will be a small residual category where striking off will be a disproportionate sentence in all the circumstances ...*
 - (c) In deciding whether or not a particular case falls into that category, relevant factors will include the nature, scope and extent of the dishonesty itself, whether it was momentary ... or over a lengthy period of time ... whether it was a benefit to the solicitor ... and whether it had an adverse effect on others..."*
22. The misconduct involved dishonesty and is therefore at the most serious end of the scale. Almost invariably this would justify striking off. However, it is considered that the following factors constitute exceptional circumstances and that this case falls within the limited number of cases where a lesser sanction than striking off is appropriate:

- 22.1. The Respondent's motivation for the conduct was not personal gain but to assist a client;
 - 22.2. There was no harm caused;
 - 22.3. The Respondent has no regulatory history;
 - 22.4. This was a single episode of misconduct in a previously unblemished career, limited to a single short email;
 - 22.5. The conduct was momentary and the Respondent made immediate admissions to her Firm and to the SRA;
 - 22.6. The Respondent's adverse health as set out in the independent medical evidence.
23. The case therefore falls within the small residual category where striking off would be a disproportionate sanction. In the circumstances it is submitted that factors outlined justify the sanction proposed. However, the seriousness of the misconduct is such that a restriction order, reprimand or fine is not appropriate. There is a need to protect the public and the reputation of the legal profession by removing the Respondent's ability to practise for a limited period. Public confidence would be damaged if a solicitor who was dishonest, even in the circumstances of this case, was allowed to continue practising. Further, according to the medical opinion, the Respondent's adverse health provides some context to her conduct. In light of her adverse health (which is ongoing) it is necessary for the protection of the public and public confidence for her to be removed from practise for a finite period and then subject to indefinite restrictions following that. In the event that there is a change in these health issues, the Respondent may apply for the restrictions to be removed or varied. In the circumstances it is submitted that factors outlined justify the sanction proposed.

Signed:

Name:

Dated: 16 March 2023

Signed:

Name: Annabel Joester

For and on behalf of the SRA

Dated: 16 March 2023